IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN, JAIPUR BENCH, JAIPUR.

S. B. CIVIL MISC. APPEAL NO. 2048/2003

M/s A. Mukherjee Company and Others

VERSUS

M/s Coventry Metals Pvt. Ltd.

Date of Judgment : 5th December, 2006

Hon'ble Mr. Justice R. S. Chauhan

Mr. O. P. Garg for the Appellant
Mr. A. K. Bhandari, Sr. Advocate with
Mr. Ananat Bhandari for the Respondent.

(Per Court):

The contest between the landlord, the appellant before us and the tenant, the respondent before us, over the fixation of the provisional rent, has brought the parties before this court. Vide Order dated 18-7-2003, passed by the Additional District Judge No. 9, Jaipur City, the learned Judge has fixed the provisional rent of the building at the rate of Rs. 7000/- per month-- a provisional rent which is too little according to the appellant.

The brief facts of the case are that the appellant No. 1 was a partnership firm which owned a “Pital Factory” (a brass factory) situated on the Jhotwara Road in Jaipur. The said firm manufactured semis of Non-ferrous metals. Subsequently, the said firm was converted into private limited company by the name of Coventry Metals (Rajasthan) P. Ltd. In this Company the ex-partners of Appellant No. 1 had also become Directors and share holders of the defendant respondent Company. Therefore, the Appellants had let out the “Pital Factory”, on 1-3-1970 to the defendant Company at a nominal rent of Rs. 1, 050/- per month. Subsequently, a registered lease deed was executed on 23-1-1972. The suit premises were let out for a period of twenty-two years, which expired on 28-2-1992. Although, the defendant company had closed down the manufacturing process, but due to the nominal rental being paid by them for a large area of 48,816 sq. feet., the defendant company did not hand over the premises to the appellants. On 18-7-2000, the appellants filed a suit for fixation of standard rent on the ground that the rental value in the area had increased phenomenally, and the standard rent needed to be determined. In order to buttress their case, the appellants had produced a number of lease deeds. On the

other hand, the defendant respondents had filed their written statements and had denied the appellants' averments. After hearing both the parties, the learned Judge has determined the provisional rent as aforementioned. Thus, this appeal before this Court.

Mr. O. P. Garg, the learned counsel for the Appellant has contended that firstly, the suit for fixation of standard rent was filed under the Rajasthan Premises (Control of Rent and Eviction) Act, 1950 (henceforth to be referred to as “the Old Act”, for short). The Rent Control Act, 2001 (henceforth to be referred to as 'the New Act', for short) came into effect much later. Although according to Section 32 of the New Act suits filed under the Old Act were to be decided under the provision of the Old Act, still the learned Judge has applied the New Act to the present suit. Thus, he has committed a grave illegality. Secondly, the impugned Order is a non-speaking order as it has not assigned any reason for calculating the provisional rent to be at the rate of Rs. 7000/- per month. Thirdly, the learned Judge has ignored the large number of lease deeds submitted by the appellants in order to substantiate his case that the rental value in the vicinity had increased phenomenally and even the provisional rent should be

reasonable. Considering the phenomenal increase in the rental value in the vicinity, according to the learned counsel, the provisional rent of Rs. 7000/- is too little.

On the other hand, Mr. A. K. Bhandari, Sr. Advocate and the learned counsel for the respondent, has vehemently argued that learned Judge has rightly applied the provisions of the New Act. According to the learned counsel, Section 6 (3) of the Old Act clearly states that the court should consider “other relevant considerations” while determining the provisional rent. After the coming into force of the New Act, one of the relevant considerations would be the revised rent decided under Section 6 of the New Act. Therefore, the learned Judge has rightly applied the criteria for the revision of the rent under the New Act for determining the provisional rent under the Old Act. Secondly, that at the stage of determining the provisional rent, a summary trial is held. Hence, there is no need for the court to pass a reasoned order. Thirdly, the rent determined under Section 7 (1) is only interim in nature. In case the provisional rent is too little, at the time of final determination of the standard rent, the court is empowered to direct that the standard rent be paid from a

retrospective date. Thus, the appellant's interest is not adversely affected by the impugned Order.

We have heard the learned counsels for the parties and have perused the impugned Order.

A plethora of legal issues have arisen for the determination of this court: firstly, what is the consequence of repeal of Old Act and the re-enactment of the New Act on the same subject-matter? Secondly, can the New Act be read indirectly into the Old Act? Thirdly, was the learned Judge legally justified in reading the New Act into the Old Act?

Section 6 of the Rajasthan General Clauses Act, 1955 (henceforth, to be referred to as 'the Act of 1955', for short) deals with the consequence of repeal of a State Act and states as under:

> **Effect of Repeal**--(1) Where any Rajasthan law repeals any enactment hitherto made or thereafter to be made then unless a different intention appeals the repeal shall not--
>
> a) revive anything not in force or existing at the time at which the repeal takes effect; or
>
> b) affect the previous operation of any

enactment so repealed or anything duly done or suffered thereunder; or

c) affect any right, privilege, obligation or liability acquired, accrued or incurred under any enactment so repealed; or

d) affect any fine, penalty, forfeiture or punishment incurred n respect of any offence committed against any enactment so repealed; or

e) affect any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, fine penalty , forfeiture or punishment as aforesaid;

and any such investigation, legal proceeding or remedy may be instituted, continued or enforced, and any such fine, penalty, forfeiture or punishment, may be imposed, as if the repealing law had not been passed.

2) the provisions of this section shall also apply upon the expiry of withdrawal of any Rajasthan law [as if such law had not expired or, as the case may be, had not been withdrawn]:

Provided that the provision contained in clause (a) of sub-section (1) shall not apply.

Thus, consequence of the repeal of an Act is not to obliterate the Old Act. Instead, a legal fiction is created that the repeal of the Old Act would not affect any right, privilege, obligation or liability acquired, accrued or incurred under any enactment so repealed.

They shall continue as though the Old Act were still continuing notwithstanding its express repeal.

In the case of State of Punjab v Harnek Singh ((2002) 3 SCC 481), the Hon'ble Supreme Court dealt with the General Clauses Act, 1897 and observed as under :

> The General Clauses Act has been enacted to avoid superfluity and repetition of language in various enactments. The object of this Act is to shorten the language of Central Acts, to provide as far as possible, of uniformity of expression in the Central Acts, by giving definition of series of terms in common use, to state explicitly certain convenient rules for construction and interpretation of the Central Acts, and to guard against slips and oversights by importing into every Act certain common form clauses, which otherwise ought to be inserted expressly in every Central Act and has to be read in such Act unless specifically excluded. Even in cases where the provisions of the Act do not apply, courts in the country have applied its principles keeping in mind the inconvenience that is likely to arise otherwise, particularly when the provisions made in the Act are based upon the principles of equity, justice and good conscience.

What the Apex Court has observed for the General Clauses Act

of 1897, equally applies to the Act of 1955.

Section 32 of the New Act is as under :

> 32. Repeal and savings : (1) The Rajasthan Premises (Control of Rent and Eviction) Act, 1950 (Act No.17 of 1950) shall stand repealed with effect from the date notified under sub-section (3) of section 1 of this Act.
>
> (2) The repeal under sub-section (1) shall not affect -
>
> (a) anything duly done or suffered under the enactment so repealed; or
>
> (b) any right, title, privilege, obligation or liability acquired or incurred under the enactment so repealed; or
>
> (c) any fine, penalty or punishment incurred or suffered under the provisions of the enactment so repealed.
>
> (3) Notwithstanding the repeal under sub-section (1) -
>
> (a) all applications, suits or other proceedings under the repealed Act pending on the date of commencement of this Act before any court shall be continued and disposed of, in accordance with the provisions of the repealed Act, as if the repealed Act had continued in force and this Act had not been enacted. However, the plaintiff within a period of one hundred and eighty days of coming into force of this Act shall be entitled to withdraw any suit or appeal or any other proceeding pending under the repealed Act with liberty to

> file fresh petition in respect of the subject matter of such suit or appeal or any other proceeding under and in accordance with the provisions of this Act and for the purposes of limitation such petition shall, if it is filed within a period of two hundred and seventy days from the commencement of this Act, be deemed to have been filed on the date of filing of the suit which was so withdrawn and in case of withdrawal of appeal or other proceeding, on the date on which the suit, out of which such appeal or proceeding originated, was filed;
>
> (b) the provision for appeal under the repealed Act shall continue in force in respect of applications, suits and proceedings disposed of thereunder;
>
> (c) all prosecutions instituted under the provisions of the repealed Act shall be effective and disposed of in accordance with such repealed law;
>
> (d) any rule or notification made or issued under the repealed Act and in force on the date of commencement of this Act shall continue to govern the pending cases.

A bare perusal of the said section clearly reveals that the legislature did not erase the Old Act in toto. According to them, the repeal of the Old Act would not affect “any right, title, privilege, obligation or liability acquired or incurred under the enactment so repealed”. Thus, the Old Act would continue to cover such rights or

obligation as were incurred under the Old Act. Furthermore, notwithstanding the repeal of the Old Act, “all applications, suits or other proceedings under the repealed Act, pending on the date of commencement of this Act before any court shall be continued and disposed of, in accordance with the provisions of the repealed Act as if the repealed Act had continued in force and this Act had not been enacted”. Therefore, the pending cases would have to be decided in accordance with the Old Act, and the New Act shall be inapplicable to such cases. Moreover, the said section provides an option to the plaintiff to withdraw his suit under the Old Act and to re-present it under the New Act within one hundred and eighty days from the date of commencement of the New Act.

Thus, the said section is in consonance with Section 6 of the Rajasthan General Clauses Act, 1955. It creates a legal fiction and directs the court to continue the proceeding under the Old Act, notwithstanding the repeal of the Old Act. The rights, or the liability are to be covered by the Old Act as though the New Act had not come into force. Hence, it emphatically directs the courts not to apply the New Act on those case which were pending on the date when the

New Act came into force. This is the mandate of Section 32 of the New Act.

In the case of Balbeer Kumar Jain & Ano v Tripti Kumar Kothari (2004 (1) RLR 86) which was followed in Heera Lal v. M/s Uttam Chand Deshraj (2005 WLC (UC) 759), this court was seized of the issue as which law would apply to suits which were pending under the Old Act when the New Act came into force. In both these cases, this court clearly held that the suits filed under the Old Act would be covered and conducted under the provision of the Old Act. The provisions of New Act would be inapplicable to those suits which were filed under the Old Act.

The learned Judge has justified his retrospective application of the New Act ostensibly on the ground that in case the New Act were not applied, it would create an anomalous situation where some cases are decided under th Old Act and others are decided under the New Act. However, such a reasoning is misplaced. For, the language of Section 32 of the New Act prohibits a retrospective application of the New Act. Moreover, the suits filed under the Old Act and under

the New Act form two distinct classes. Thus, they can be treated differently. The principle of equality is not violated if unlike are treated in an unlike manner. Hence, the logic of the learned Judge is misplaced.

While enacting the New Act, the legislature was certainly aware that it might lead to an anomalous situation where determination of provisional rent under the Old Act and the revision of the rent under the New Act might be disproportionate. However, even after being fully conscious of this fact, still it declared that the New Act should not be applied retrospectively. Considering the tenor, the plain and grammatical meaning of Section 32 of the New Act, the learned Judge was duty bound to apply the criteria as laid down by Section 6 (3) of the Old Act, while deciding the provisional rent. Therefore, clearly the learned Judge has erred in applying the New Act to a suit which was instituted under the Old Act.

In the case of Balbeer Kumar Jain (supra) this court has categorically held, " Only on account of this aspect that in case standard rent is fixed in accordance with provisions of old Section 6,

that may be higher in comparison to the rent revised under Section 6 of the New Act is no ground to hold that pending application, suits or other proceedings under the repealed Act on the date of commencement of this New Act would be governed by the New Act. At the cost or repetition, it is observed that the provisions of Section 32 (3) (a) of the New Act are very clear and thus all the proceedings for fixation of standard rent pending under the old Act on the date of commencement of the New Act shall be continued and disposed of in accordance with the provisions of the Repealed Act."

Furthermore, the learned Judge has failed to observe that an option was given to the appellants to withdraw the suit under the Old Act and to re-present the suit under the New Act within the stipulated period. However, the appellants did not do so as they were convinced that their case should be decided under the Old Act itself. By importing the New Act into a suit pending under the Old Act, the learned Judge has over-stepped his jurisdiction.

The contention raised by the learned counsel for the respondent that the words 'other relevant considerations' occurring in

Section 6(3) of the Old Act should be interpreted to mean that 'the revised rent fixed under the New Act are relevant consideration' is untenable. For, according to Section 32 of the New Act, the pending suits under the Old Act are to be determined as though the New Act does not exist. Therefore, the revised rent under the New Act can not be taken into account. To do so, would be contrary to the mandate of Section 32 of the New Act. Secondly, the court can not be permitted to import the revised rent under the New Act while deciding the standard rent/ provisional rent under the Old Act. For, what the court can not do directly, it can not be permitted to do indirectly. Thirdly, Section 6 (3) of the Old Act uses the words “prevailing rent” and the words “other relevant considerations”. The two categories cannot be fused into a single class. Thus, the meaning of the phrase “other relevant consideration” would have to be different than the meaning of the words “the prevailing rent”. According to the rule of ejusdem generis, a residuary phrase or expression takes its color from the the words it keeps company with. Black's Law Dictionary has defined the Rule of ejusdem generis as, “ A canon of construction that when a general word or phrase follows a list of specific persons or things, the general word or phrase will be interpreted to include only persons or

things of the same type as those listed". Thus, the above noted words would have to be interpreted in the light of the other words used in the section. The other words used are "amenities, the cost of construction, maintenance and repairs, the special reasons etc". Hence, the words 'other relevant consideration' would mean other factors which throw light on the issue of standard/ provisional rent. Such relevant consideration could be the report of a valuer, or the rate of the land fixed by the District Level Committee (the DLC rates, for short).

Moreover, under the New Act there is no provision for fixation of standard or provisional rent. Under Section 6 of the New Act, the court is empowered to revise the rent according to the given formula. While considering the revision of rent under the New Act, the court would be alive to the fact that the said rent has been revised / increased under the New Act and under a different yardstick than the yardstick provided for fixation of standard/ provisional rent under the Old Act. By the mere fact that the rent is fixed under the New Act and under a different set of criteria, such rent becomes 'irrelevant' for the purpose of fixing the standard rent under Section 6 (3) of the Old

Act. Hence, the contention raised by the learned counsel for the respondent is without merit.

A bare perusal of the impugned Order also reveals that the learned Judge has not assigned any reasons for fixing the provisional rent at the rate of Rs. 7000/- per month. It is a magical figure which has been pulled out of a hat. Although Section 7 of the Old Act envisages a summary procedure to be followed while determining the provisional rent, but even then a speaking order is a sine quo non. Since the said order is subject to appeal, it must be a speaking order. Otherwise, the appellate court is left guessing the reasons for the fixation of the provisional rent. In the present case, the impugned order is a non-speaking order. Thus, it is unsustainable.

In the result this court has no option but to remand the case back to the learned court of Additional District Judge No. 9, Jaipur City, Jaipur for re-determination of the provisional rent in accordance with Section 6 (3) of the Old Act. The learned Judge is not only expected to consider the documentary evidence produced by the

parties, but is also expected to pass a reasoned and a speaking order. Since the case has been pending for last five years, the learned Judge is directed to decide the provisional rent within a period of three months, from the date of the receipt of the certified copy of this Judgment. With these observations, this appeal is allowed. There shall be no order as to cost.

(R. S. Chauhan) J.